HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

Writ Petition M/S No. 315 of 2006
Committee of Management
& others

vs

State of Uttaranchal
through Secretary

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 3.4.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 315 (MS) OF 2006

Committee of Management, Intermediate College,
Balawala, Dehradun, through its Manager,
Sri Swaran Singh Bhandari, S/o Sri Alam Singh Bhandari,
R/o Balawala, Dehradun, District Dehradun. ..Petitioner.

Versus

1. State of Uttaranchal through the Secretary, Secondary Education, Uttaranchal, Dehradun.
2. Joint Director of Education, Garhwal Region, Pauri.
3. District Education Officer, Dehradun.
4. Sri S.C. Purohit, Aughorised Controller, Principal Govt. Inter College, Sauda, Saroli, Dehradun.

.....Respondents

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 18.03.2006 (Annexure-1 to this writ petition) passed by the District Education Officer, Dehradun. Further prayer has been made for a writ of mandamus directing the respondents to produce the copy of the order dated 08.03.2006 being the order No. Sankhay/Madhyamik/56431-33/05-96 and has further prayed for a writ of mandamus restraining the respondent no. 4 from acting as Authorised Controller and interfering in the peaceful functioning of the petitioner and to allow the petitioner to complete the election process before expiry of the term of the Management Committee.

2. Briefly stated, the petitioner is the duly elected Manager of the Management Committee of the Intermediate College, Balawala, Dehradun. According to the case of the petitioner in the meeting of the Management Committee held on 15.12.2005, it was decided to hold election of the Committee Management on 22.12.2005 and in pursuance of the said

election held on 22.12.2005, the approval was granted on 1st January, 2003 and the new management has taken over the charge on 19.10.2003.

Learned counsel for the petitioner has referred Section 16(A) of the Intermediate Education Act, where the scheme of administration has been defined for conducting affairs of the Institution. According to the scheme of administration, there is a provision for election after every three years. Clause (6) of the Scheme of Administration is quoted below:-

''6– प्रबन्ध समिति का कार्यकाल–

पदाधिकारी एवं समिति के सदस्यों का कार्यकाल तीन वर्ष का होगा। कार्य अवधि समाप्त हो जाने पर अगले मास तक ही पदाधिकारी बने रह सकेंगे। यदि 3 वर्ष के बाद एक माह के अन्दर नव चयनित समिति कार्यभार नहीं ग्रहण करती तो 3 वर्ष 1 माह बाद कालतीत समिति का कार्यकाल स्वतः समाप्त समझा जायेगा और संभागीय उप प्रिक्षा निदेप्रक द्वारा मनोनीत एक व्यक्ति प्रबंध संचालक कार्यरत माना जायेगा जिसे प्रबंधीकरा के पूर्ण अधिकार होंगे। वह प्रबंध संचालक नव चयनित समिति को प्रीघ्रतिप्रीघ्र कार्यरत करायेगा और यदि चुनाव नहीं हुआा है तो चुनाव कराके चयनित समिति को कार्यरत करायेगा और यदि प्रबन्ध समितियों में अधिकार का दावा है तो जिसके पक्ष में संभागीय उप प्रिक्षा निदेप्रक का निर्णय हो उसे कार्यरत करायेगा।''

The District Education Officer in accordance with the Scheme of Administration has appointed Prabandh Sanchalak as Administrator for affairs of the Committee of Management treating the period as having expired.

Petitioner has referred the judgment of Malkiyat Singh Vs. Cane Commissioner, U.P. and others reported in 1992 (II)

UPLBEC, Page 937. Relevant paragraph 12 of the aforesaid judgment is quoted below:-

"12. As mentioned herein before, the terms of the Committee of Management of the Federation began on 2-1-1989 on which date it held its first meeting and its term of three years came to an end on 2-1-1992, on which date it ceased to exist. Sub-section (4) of Section 29 authorises the Registrar to appoint an Administrator or a committee of Administrators after expiry of the term of the Committee of Management. On 10-10-1990, on which date the Administrator was appointed by the impugned order, the term of the Committee of Management had not come to an end. It is not open to the Registrar, under the said provisions, to appoint an Administrator before expiry of the term of the Committee. The impugned order of appointment of Administrator, as such, was without jurisdiction, and is liable to be quashed. But, as mentioned above, during the pendency of the writ petition the term of the Committee of Management of the Federation has expired and even though the impugned order of appointment of the Administrator is without jurisdiction, no relief can be given to the petitioner due to passage of time, because no useful purpose can be served by setting aside the order of the appointment of the Administrator, in as much as the Registrar is bound to appoint an Administrator, in as much as the Registrar is bound to appoint an Administrator again as the term of the Committee of Management of the Federation had already expired on 2-1-1991."

The grievance of the petitioner is that so far as the appointment of the Administrator is concerned, power could not have been exercised by the District Education Officer in as much as the petitioner, the management had taken over the

charge on 19.10.2003 and as such the period has yet to be expired.

In view of the aforesaid fact, a writ of certiorari is issued quashing the order dated 18.03.2006 passed by the District Education Officer. The matter is sent back to the respondent no. 2/Joint Director of Education, Garhwal Region, Pauri for passing the order afresh after hearing the petitioner and summoning the record from the management.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

03.04.2006

Rathour